

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

GOLDEN HOUR DATA SYSTEMS, INC.,	§	
	§	
Plaintiff,	§	
	§	
vs.	§	CIVIL ACTION NO. 2:06-CV 381 TJW
	§	
emsCHARTS, INC. and SOFTTECH, LLC,	§	
	§	
Defendants.	§	

NOTICE OF AMENDED CROSS-APPEAL BY DEFENDANT EMSCHARTS, INC.

Defendant emsCharts, Inc. (“emsCharts”) is the prevailing party in the Final Judgment entered in this action on April 3, 2009 (Dkt. No. 286), which stated that “plaintiff [Golden Hour Data Systems, Inc. (“Golden Hour”)] takes nothing by way of its claims” as a result of the district court’s determination that the patent-in-suit “is unenforceable due to plaintiff’s inequitable conduct before the U.S. Patent and Trademark Office.” (Dkt. No. 286). On May 4, 2009, emsCharts timely filed a cross-appeal for protective purposes in the event the United States Court of Appeals for the Federal Circuit overturns the district court’s determination of unenforceability of the patent-in-suit due to the commission of inequitable conduct, which notice of cross-appeal is incorporated by reference. (Dkt. No. 293).

As indicated in the original notice of cross-appeal, filed on May 4, 2009, emsCharts cross-appeals to the United States Court of Appeals for the Federal Circuit from the Final Judgment entered in this action on April 3, 2009 (Dkt. No. 286), to the extent that the Final Judgment is consistent with the Jury Verdict delivered on November 25, 2008 in favor of Golden Hour (Dkt. No. 202) and denies emsCharts’ Motions for Judgment as a Matter of Law or, in the

Alternative, a New Trial on the issues of invalidity over the prior art, direct infringement by emsCharts alone, inducement, and willfulness.

Shortly after the filing of emsCharts' notice of cross-appeal, the district court issued a Memorandum Opinion and Order, entered in this action on May 11, 2009 (Dkt. No. 296, with a Corrected Opinion issued as Dkt. No. 297 on May 12, 2009), denying emsCharts' Motion for Determination of Exceptional Case Under 35 U.S.C. § 285 and Award of Attorneys' Fees (Dkt. No. 289). This amended cross-appeal is, therefore, filed to give notice that emsCharts additionally appeals to the United States Court of Appeals for the Federal Circuit from the Memorandum Opinion and Order entered in this action on May 11, 2009 (Dkt. No. 296, with a Corrected Opinion issued as Dkt. No. 297 on May 12, 2009), denying emsCharts' Motion for Determination of Exceptional Case Under 35 U.S.C. § 285 and Award of Attorneys' Fees (Dkt. No. 289).

Dated: June 1, 2009.

Respectfully submitted,

McKOOL SMITH, P.C.

By: /s/ Sam Baxter

Sam Baxter, Lead Attorney
Texas State Bar No. 01938000
P.O. Box 0
104 East Houston, Suite 300
Marshall, TX 75670
Telephone: (903) 923-9000
Facsimile: (903) 923-9099
sbaxter@mckoolsmith.com

Theodore Stevenson, III
Texas State Bar No. 19196650
tstevenson@mckoolsmith.com
M. Jill Bindler
Texas State Bar No. 02319600
jbindler@mckoolsmith.com
McKOOL SMITH P.C.
300 Crescent Court, Suite 1500
Dallas, TX 75201
Telephone: (214) 978-4000
Telecopier: (214) 978-4044

Of Counsel:

Susan M. Dadio
susan.dadio@bipc.com
Martin A. Bruehs
martin.bruehs@bipc.com
BUCHANAN INGERSOLL & ROONEY PC
1737 King Street, Suite 500
Alexandria, VA 22314
Telephone: (703) 836-6620
Telecopier: (703) 836-2021

S. Manoj Jegasothy
BUCHANAN INGERSOLL & ROONEY PC
301 Grant Street, 20th Floor
Pittsburgh, PA 15219-1410
Telephone: (412) 562-8800
Telecopier: (412) 562-1041
manoj.jegasothy@bipc.com

Eric H. Weisblatt
WILEY REIN LLP
1776 K Street, N.W.
Washington, D.C. 20006
Telephone: (202) 719-7416
Telecopier: (202) 719-7049
eweisblatt@wileyrein.com

**ATTORNEYS FOR DEFENDANT
EMSCHARTS, INC.**

CERTIFICATE OF SERVICE

The undersigned certifies that on this June 1, 2009, the foregoing document was filed electronically in compliance with Local Rule CV-5(a). As such, the document was served on all counsel who have consented to electronic service. Local Rule CV-5(a)(3)(A).

/s/ Sam Baxter

Sam Baxter